

**BEFORE THE FEDERAL ELECTION COMMISSION**

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**MUR 7111**

**RESPONSE OF DONALD J. TRUMP, DONALD J. TRUMP FOR PRESIDENT, INC.  
AND TIMOTHY JOST, AS TREASURER, TO THE COMPLAINT**

By and through undersigned counsel, Donald J. Trump, Donald J. Trump for President, Inc., (the "Committee") and Timothy Jost, as Treasurer (collectively, "Respondents") respond to the Complaint in the above-captioned MUR. We respectfully request that the Commission find there is no reason to believe a violation has occurred, dismiss the complaint, and close the file.

**I. BACKGROUND**

The complaint in this matter makes a number of allegations loosely based on Meredith McIver's involvement with a campaign speech given by Melania Trump at the Republican National Convention. Meredith McIver is an employee of the Trump Organization who appeared in news stories after she released a statement offering to resign her position and taking responsibility for a passage in Mrs. Trump's speech that was publicly criticized. According to its website, complainant Keep America Great PAC is an organization that "serves as the home of the grassroots anti-Trump movement for Democrats," proclaims that "We Are The Stop Trump Movement," and whose "primary goal is to make sure that Donald Trump never becomes President."

This complaint appears to have been filed in an attempt by Mr. Trump's political opponents to continue the media's attention on a negative story for Mr. Trump and his campaign. Though it may have served the complainant's ends as a political tactic, it is deficient as a complaint made to the Federal Election Commission. The complaint makes bald assertions that

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Respondents have violated laws without alleging any facts or evidence to support them. The complaint in this matter makes five allegations (which complainants label as "counts") based on three asserted "facts," namely (1) that Meredith McIver works for the Trump Organization; (2) that Ms. McIver said she had worked with Melania Trump on her convention speech; and (3) that Ms. McIver, in a statement on Trump Organization letterhead, indicated that she had offered her resignation from the Trump Organization to Mr. Trump. These three alleged facts—none of which constitute a violation of the Federal Election Campaign Act of 1971, as amended, ("Act") or Commission regulations—represent the sum total of the factual basis of the entire complaint, the majority of which utterly fails to allege any facts that would constitute a violation.

As it stands, the complaint is deficient and does not shift the burden to the respondent. See 11 C.F.R. § 111.4(d)(3) (outlining requirements for complaints); MUR 4850 (Deloitte & Touche, LLP, *et al.*), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 ("The burden of proof does not shift to a respondent merely because a complaint is filed."). Where the complainant does at least raise an issue that provides sufficient notice to be able to meaningfully respond to the allegation, the complaint is demonstrably wrong on the law or underlying facts. The Commission's precedent is to dismiss complaints for failure to provide "information sufficient to establish [a violation]" and it has previously explained that "[u]nwarranted legal conclusions from asserted facts will not be accepted as true." MUR 6554 (Friends of Weiner), Factual & Legal Analysis at 5; MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2. The Commission should do the same here and should find no reason to believe, dismiss the complaint, and close the file.

## II. ANALYSIS

- A. Contrary to the complaint's bald and erroneous assertions in so-called "counts" 1 and 2, the Committee has not accepted any corporate contributions in the form of Meredith McIver's services.**

In "count 1," Complainant asserts that there is reason to believe that Meredith McIver was performing campaign duties while being compensated by the Trump Organization. In "count 2," Complainant asserts that Meredith McIver was being compensated for volunteer services and did not make a contribution to the Committee. But Ms. McIver's pay in connection with the services was accounted-for as a Committee expense and not a corporate in-kind. It is not the case, as the complaint alleges, that Ms. McIver was compensated by the Trump Organization for work on Mrs. Trump's convention speech. As the Committee's public reporting indicates, Ms. McIver's compensation was paid personally by Mr. Trump for the isolated services provided and minimal time—a portion of one day—she spent in connection with Mrs. Trump's speech. *See Donald J. Trump for President, Inc. August Monthly Report, at 93118 (Transaction ID SB23.1681564.9).*

Mr. Trump is free to self-fund his campaign, including paying individuals to perform campaign work. *See Buckley v. Valeo*, 424 U.S. 1 (1976). Here, Mr. Trump transfers personal funds in the form of pre-paid payroll, specifically to avoid the appearance of an in-kind contribution from the Trump Organization. The amount was reported as an in-kind contribution from Mr. Trump to the Committee, with an accompanying memo entry for Ms. McIver. This sort of pre-paid payroll, where permissible funds are fronted in advance of work being performed and payroll being run, has been recognized by the Commission. *See, e.g., AO 1984-37 (American Medical Association).* Thus, no company funds are used to pay the Committee's attributable share of payroll. Ms. McIver's services, which were provided for only a fraction of a

day, were compensated in this manner and reported in this manner. Since the portion of Meredith McIver's payroll commensurate with the services she provided to the Committee was paid by the Committee in accordance with Commission Advisory Opinions, there was no third-party compensation of paid services or volunteer services.<sup>1</sup> The Commission should find no reason to believe on "counts" 1 and 2.

**B. The complaint does not provide any facts relating to the corporate facilitation of contributions and the Committee did not receive any such contributions.**

Complainant asserts, apparently based on Ms. McIver's printing a statement on the company letterhead from which she was offering to resign, that there is reason to believe the Trump Organization is using its name to facilitate contributions to the Committee. But the complaint provides absolutely no explanation of this conclusion—no factual allegation or assertion to the effect—and nothing in the complaint has anything to do with fundraising, contributions, or the like. So there is little to respond to in this "count," other than to say that there is no information provided from which to determine a violation has occurred and the Commission should not accept such an unwarranted legal conclusion as true. *See* 11 C.F.R. § 111.4(d)(3) (requiring a complaint to include a "clear and concise recitation of facts which describe a violation"); MUR 6554 (Friends of Weiner), Factual & Legal Analysis at 5; MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2.

<sup>1</sup> Further, the Trump Organization is an LLC wholly owned by Donald J. Trump. *See* Donald J. Trump, OGE Form 278e, Page A37 (July 15, 2015). Here, not only was Ms. McIver's compensation properly accounted for and disclosed, but even if it had not been, the source of compensation—Mr. Trump—is permissible and unlimited.

Ms. McIver's use of company letterhead is not surprising or inappropriate since she is an employee of Trump Organization and had made an offer to resign from that company. Her connection with the campaign was isolated to her interaction with the speech. The statement regarding her offer to resign had absolutely nothing to do with fundraising and was not made in any campaign capacity. Further, there was no ascertainable cost or contribution to the Committee of anything of value associated with the use of such letterhead—at worst, the value is *de minimis*. And absent any indication of a fundraising connection, there is no allegation of facts which describe any violation of the regulation cited. As such, there is no reason to believe a violation of the Act has occurred and this "count" should be dismissed.

**C. The complaint does not allege facts that would lead to a reason to believe that the Committee has improperly used corporate facilities and, in fact, the Committee's payments for use of space in Trump Tower is widely known.**

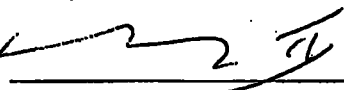
The complaint alleges that there is reason to believe that Ms. McIver used corporate facilities to volunteer for the Committee without compensation for such use. But, again, the complaint provides no fact or notice of the basis for such an unwarranted legal conclusion. Simply put, Ms. McIver's compensation was paid by Mr. Trump, and duly reported to the Commission. Equally obvious is that the Committee pays considerable rent for its use of space in Trump Tower, all of which is reported. And even if Ms. McIver had used company facilities in connection with reviewing a speech, it would have been an isolated and incidental use—a portion of one work day. 11 C.F.R. § 114.9(a) (permitting certain occasional, isolated, or incidental use of the facilities of a corporation). Certainly, any incidental use would not have increased overhead or operating costs. *Id.* Accordingly, the Commission should find no reason to believe, dismiss the complaint, and close the file with regard to this count.

- D. The complaint does not allege any facts that would lead to a reason to believe that Ms. McIver exceeded limits on volunteer transportation expenses.**

Despite the fact that the complaint indicates there is "reason to believe" that Ms. McIver, acting as a volunteer, exceeded the thresholds placed on unreimbursed volunteer travel, the complaint fails to provide any factual basis for such an unwarranted legal conclusion. Contrary to any assumption made by Complainant, Ms. McIver did not travel to the Republican National Convention. Beyond that, the complaint provides no indication of what travel Ms. McIver may have engaged in, for what purpose, how much any possible may have cost, or any other fact that could, if true, constitute a violation of the Act. Accordingly, the "count" should be dismissed, the Commission should find no reason to believe, and close the file. *See* 11 C.F.R. § 111.4(d)(3); MUR 6554 (Friends of Weiner), Factual & Legal Analysis at 5; MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2.

### **III. CONCLUSION**

Based on the foregoing, the Commission should find no reason to believe, dismiss the complaint, and close the file.



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